IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 6-9-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.26670 of 2007

and
MP Nos.1 and 2 of 2007

PA.Ganeshwaran .. Petitioner

vs

1.The Secretary to Government
Municipal Administration and
Water Supply Department
Fort St. George, Chennai 9.

2.The Commissioner of Municipal
Administration
Chepauk, Chennai 5.

3.The Commissioner
Coimbatore City Municipal Corporation
Coimbatore 641 001. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the first respondent to consider the petitioner for the post of City Engineer by promotion in the Coimbatore City Municipal Corporation.

For Petitioner : Mr.AR.L.Sundaresan
Senior Counsel
for Ms.A.L.Ganthimathi

For Respondent : Mr.I.Paranthaman
Additional Government
Pleader for RR1 and 2
Mr.R.Sivakumar for R3

ORDER

Invoking the writ jurisdiction of this Court, the petitioner, an Executive Engineer, attached to Coimbatore City Municipal Corporation, has brought forth this writ petition for a writ of mandamus to direct the State to consider the petitioner for the post of the City Engineer by promotion in the Coimbatore City Municipal Corporation.

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2.The Court heard the learned Senior Counsel for the petitioner and looked into the affidavit in support of the petition. The Court also heard the learned Counsel for the respondents and looked into the counter affidavit filed by the third respondent.

3.The petitioner has approached this Court for the issuance of a writ of mandamus stating that he has been working as Executive Engineer in the third respondent Coimbatore City Municipal Corporation, from 21.7.2006; that he has applied to the post of the City Engineer; that it is true that he has not possessed with the necessary qualification; but, he has applied for the same to the State which is the appointing authority; that the State has got all powers to relax the necessary qualification for the said appointment; that there were instances in the past, when the applications by the individuals who lacked necessary qualification, were actually considered by the Government, relaxing the rules and making promotion to them; that the petitioner who has actually been serving as Executive Engineer, has got sufficient experience; that he has also made an application to the State for promotion to the said post; that the same is pending consideration, and under the circumstances, it has become necessary to issue a direction to the first respondent.

4.The learned Additional Government Pleader for the State would submit that the application made by the petitioner, is pending in the hands of the Government for consideration.

5.The learned Counsel for the third respondent would submit that the post of the City Engineer has become vacant pursuant to the retirement of the person who was working then as City Engineer, on 31.8.2007; that the said post cannot be kept vacant; that it requires early appointment, and under the circumstances, the writ petition has got to be dismissed.

6.The Court paid its anxious consideration on the submissions made.

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7.It is not in controversy that the petitioner herein is actually serving as Executive Engineer attached to the Coimbatore City Municipal Corporation, from 21.7.2006. As regards the qualification for promotion to the post of the City Engineer, Rule 4 of The Tamil Nadu Municipal Corporations Engineering and Water Supply Service Rules, 1996, reads as follows:

> "4. Qualification:- No person shall be appointed to the categories specified in column (1) of the table below by the method specified in column (2) unless he possesses the qualifications specified in the corresponding entries in column (3), thereof:

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THE-TABLE

Name of the Post	Method of appointment	Qualification
(1)	(2)	(3)
City Engineer	By promotion	Must have worked as Executive Engineer for a period of not less than 3 years in the Corporation, and for a minimum period of one year in the post of Assistant Commissioner (Ward Office).
	By deputation	Must have atleast two years of service before his age of Superannuation

....."

8.From the very reading of the above Rule, it would be quite clear that for the promotion to the post of City Engineer, one must have worked as Executive Engineer for a period of not less than three years in the Corporation, and also for a minimum period of one year in the post of Assistant Commissioner (Ward Office). True it is, the petitioner herein does not possess the qualification as one found in the Rule. But, the petitioner who is working as Executive Engineer in the very same Corporation for the past one year, has applied to the Government on 16.7.2007 for promotion to the post of City Engineer by relaxing the Rules. The learned Senior Counsel for the petitioner has brought to the notice of the Court that there were instances in the past where the rules have been relaxed and the Executive Engineers have been promoted to the post of City Engineer. Now, the learned Additional Government Pleader would submit that the application made by the petitioner, is actually pending in the hands of the Government for consideration.

9.The only contention put forth by the learned Counsel for the third respondent is that the post has got to be immediately filled up. Now, at this juncture, it is brought to the notice of the Court that it has become vacant only on 31.8.2007 i.e., a few days before, and if at all a person has got to be appointed, applications have got to be called for and scrutinized, or a competent and suitable candidate from the other Corporations within the State of Madras has got to be transferred, and then, the appointment has to be made. Thus, it could be seen that the said process would take reasonable time. Under the circumstances, this Court feels that it would be fit and proper to issue a direction to the State to consider the application of

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the petitioner, which, according to him, is given on 16.7.2007, and pending consideration in its hands, within the stipulated time. Accordingly, the first respondent State is directed to consider the application of the petitioner as to whether it is a fit and proper case where it could relax the rules and give promotion to the petitioner from the post of the Executive Engineer, which he is holding today, to the post of the City Engineer, within a period of eight weeks herefrom. Taking into consideration the urgency of the matter, it has become necessary for the State to consider and pass suitable orders thereon within that stipulated time.

10.The learned Additional Government Pleader would submit that the petitioner may be directed to place a copy of his application for promotion which, according to him, was given on 16.7.2007, along with a copy of the order of this Court. Accordingly, a direction is issued, and this writ petition is disposed of. No costs. Consequently, connected MPs are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

nsv/

To:

1.The Secretary to Government
Municipal Administration and
Water Supply Department
Fort St. George, Chennai 9.

2.The Commissioner of Municipal
Administration
Chepauk, Chennai 5.

3.The Commissioner
Coimbatore City Municipal Corporation
Coimbatore 641 001.

2 ccs to M/s. A.L. Gandhimathi, Advocate, Sr,. 55751
1 cc to M/s. R. Sivakumar, Advocate, Sr. 55838

WP No.26670 of 2007

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